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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : OCTOBER 27, 2016

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CRL.M.C.4052/2016 & CrI.M.A.16939/2016

GAURAV DHIMAN

..... Petitioner

Through : Mr.Rajiv Garg with Mr.Rajiv Kapoor,
Advocates.

versus

STATE & ANR.

..... Respondents

Through : Mr.M.S.Oberoi, APP.
SI Vishvendra, PS Seemapuri.
Mr.Saurabh Kr.Pandey, Advocate, for
R-2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of FIR No.167/2015 under Section 376 IPC registered at Police Station Seemapuri.

2. I have heard the learned counsel for the parties and have examined the file. Petitioner's counsel urged that the matter has since been settled with the victim and Memorandum of Understanding (MOU) dated 23.02.2016 has been executed between them. It is further urged that earlier the petitioner had agreed to marry the victim. Subsequently, she changed

her mind and did not agree to the marriage. She has since married with someone else. Since it was consensual physical relationship, the FIR in question is liable to be quashed.

3. On perusal of the file, it reveals that earlier also the petitioner had filed CrI.M.C.1018/2015 and it was dismissed as withdrawn on 13.03.2015. Apparently, there is no change of circumstances to consider the quashing petition on somewhat similar grounds.

4. The petitioner is at fault for concealing material facts. The Investigating Officer informed that the charge-sheet has since been filed. This fact was not disclosed by the petitioner in the present petition. Record reveals that the bail application No.518/2015 filed by the petitioner has been dismissed on 17.10.2016 by the Bench of HMJ Mukta Gupta in the instant FIR. This fact was not disclosed by the petitioner at the time of consideration of the present petition. No copy of the said order has been placed on record.

5. The FIR was registered on 1.2.2015. The petitioner has not joined the investigation so far. His anticipatory bail application has been dismissed. Charge-sheet has been filed. Contents of FIR disclose commission of cognizable offence whereby the petitioner had allegedly committed rape upon the prosecutrix after administering stupefying substance in the cold drink. There is catena of judgments to deprecate the practice of quashing the FIR under Section 376 on the basis of settlement/compromise. It appears that the petitioner in order to avoid his arrest in the case has instituted the present petition for quashing despite its withdrawal way back on 13.03.2015.

6. Considering the specific and clear allegations in the FIR for commission of offence under Section 376 IPC, it is not a fit case for quashing of the FIR. The petition is dismissed with costs of ₹10,000/- to be deposited by the petitioner within a week before the Delhi High Court Legal Services Committee.

7. All pending application(s) also stand disposed of.

(S.P.GARG)
JUDGE

OCTOBER 27, 2016
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